



CANCELLED SECNAVINST 1850.4D OF 23 DEC 98

DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20350-1000

SECNAVINST 1850.4C CH-1
NCPB
22 July 1993

SECNAV INSTRUCTION 1850.4C CHANGE TRANSMITTAL 1

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY DISABILITY EVALUATION

Encl: (1) Revised enclosure (1)
(2) Revised pages 21 through 24, 31, 32, and 39 through 44 of enclosure (2)
(3) Revised pages 1, 2, and 15 through 30, and new page 31 of enclosure (5)
(4) Revised enclosure (6)
(5) Revised pages 9 through 12 of enclosure (7)
(6) Revised pages 4 through 6, and reprinted page 3 of enclosure (8)

1. Purpose. To provide corrections, and additional information to clarify policy and procedures of the current order. The single substantive change provides for Record Review Panel findings to become final following acceptance by the member, and review and approval.

2. Action

a. On page 3 of the basic instruction, second line of paragraph 6c, add the word "preliminary" between the words "its" and "findings."

b. On page 9 of the basic instruction, first line of paragraph 16b, change revision date of DD 149 to read "(4/90)."

c. Remove enclosure (1), pages 21 through 24, 31, 32 and 39 through 44 of enclosure (2), 1, 2, and 15 through 30, and new page 31 of enclosure (5), enclosure (6), 9 through 12 of enclosure (7), revised pages 4 through 6, and reprinted page 3 of enclosure (8), and replace with enclosures (1) through (6) of this change transmittal.

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ABBREVIATIONS AND DEFINITIONS**1001 ABBREVIATIONS**

ASD(HA) - Assistant Secretary of Defense (Health Affairs)
ASN(M&RA) - Assistant Secretary of the Navy (Manpower & Reserve Affairs)
BAC - Blood Alcohol Concentration
BCNR - Board for Correction of Naval Records
CHBUMED - Chief, Bureau of Medicine and Surgery
CHNAVPERs - Chief of Naval Personnel
CMC - Commandant of the Marine Corps
CNO - Chief of Naval Operations
COMNAVRESFOR - Commander, Naval Reserve Forces
DES - Naval Disability Evaluation System
DIRNCPB - Director, Naval Council of Personnel Boards
DNEPTE - Did not exist prior to entry (enlistment)
DOD - Department of Defense
EPTE - Existed Prior to Entry (enlistment)
GCM - General Court-Martial
IRR - Individual Ready Reserve
JAG - Judge Advocate General of the Navy
JAGMAN - Manual of the Judge Advocate General
JFTR - Joint Federal Travel Regulations
LODI - Line of Duty Investigation
MANMED - Manual of the Medical Department
MTF - Medical Treatment Facility
NCPB - Naval Council of Personnel Boards
NOE - Notice of Eligibility
NROTC - Naval Reserve Officer Training Corps
ODRB - Officer Disability Review Board
PEB - Physical Evaluation Board
PFR - Petition for Relief
PLD - Permanent Limited Duty
SECDEF - Secretary of Defense
SECNAV - Secretary of the Navy
SECNAVINST - Secretary of the Navy Instruction
SURGEN - Surgeon General
TDRL - Temporary Disability Retired List
TLD - Temporary Limited Duty
UCMJ - Uniform Code of Military Justice
VA - Veterans Administration or Department of Veterans Affairs (A)
VASRD - Veterans Administration Schedule for Rating Disabilities

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DEFINITIONS

1002 Accepted Medical Principles

Fundamental deductions, consistent with medical facts, which are so reasonable and logical as to create a virtual certainty that they are correct.

1003 Active Duty

Full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. It does not include full-time National Guard duty (10 U.S.C. 101(22)).

1004 Active Duty For A Period Of More Than 30 Days

Active duty under a call or order that does not specify a period of 30 days or less (10 U.S.C. 101(23)).

1005 Active Service

Service on active duty or full-time National Guard duty (10 U.S.C. 101(24)). For the purpose of determinations under 10 U.S.C., Chapter 61, periods of active service shall be computed under 10 U.S.C. 1208. "Active service" as used in 2078 includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

1006 Combat-Related Injury

See 2152.

1007 Conditions Not Constituting Physical Disability

Certain conditions and defects designated by the SURGEN do not constitute physical disability and are not ratable. These include but are not limited to: alcoholism, allergy to uniform clothing, character disorders, enuresis, glucose-6-phosphate dehydrogenase deficiency, heat intolerance with disturbances of thermal regulation, homosexuality, inability to be fitted in uniform clothing, medical contraindication to administration of small pox, yellow fever or cholera immunization, motion/travel sickness, obesity, overheight, primary mental deficiency, pseudofolliculitis barbae of the face and/or neck, somnambulism, stuttering or stammering, systemic or marked allergic reactions following stings by red ants, bees, wasps or other stinging

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insects, and unsanitary habits including repeated venereal disease infections.

1008 Death

Either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain including the brain stem. A determination of death must be made in accordance with accepted medical standards.

1009 Disability Benefits

Disability retirement pay and severance pay, authorized by 10 U.S.C., Chapter 61, provided for members, who, if otherwise qualified, become UNFIT FOR DUTY because of physical disability acquired or aggravated while entitled to receive basic pay. Once released from active duty and no longer entitled to receive base pay, members or former members are not authorized benefits under 10 U.S.C., Chapter 61, even though their disabilities are service connected. Rather, such members or former members must file separate disability claims with the Department of Veterans Affairs (VA). (R)

1010 Disability Retired Pay

The regular periodic compensation a member receives who is retired because of disability from active service.

1011 Disability Severance Pay

The one-time compensation a member receives who is discharged because of disability resulting from active service. Also, see 10 U.S.C. 1212.

1012 Disposition

Action to be taken affecting a member's status within the naval service. As used in this instruction, the term "disposition" means one of the following:

- a. continuation on or return to full duty,
- b. retention on active duty in a limited duty capacity,
- c. discharge with severance pay,
- d. discharge without severance pay,
- e. transfer to the TDRL,
- f. continuation on the TDRL,
- g. determination of FIT FOR DUTY and removal from the TDRL,
- h. transfer to the Permanent Retired List with disability retired pay,

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- i. transfer to the Permanent Retired List without disability retired pay,
- j. no action (under certain circumstances),
- k. physically qualified for active duty in the (Naval) (Marine Corps) Reserve, or
- l. not physically qualified for active duty in the (Naval) (Marine Corps) Reserve.

1013 Finality

A final decision shall be construed as having been issued when:

- A) a. the member accepts, either actually or constructively, the findings of the PEB following a record review, subject to review and approval, or
- b. the President, PEB, issues the Findings Letter following a formal hearing, or
- c. a PFR is acted upon by the DIRNCPB or higher authority.

1014 Findings

Decisions concerning a member's fitness, eligibility, and rating arrived at by the PEB.

1015 Findings Letter

A letter from the President, PEB, DIRNCPB, or SECNAV to the member being processed within the DES informing him or her of the findings of the PEB.

1016 Guardian/Committee

A person or persons appointed by a court of competent jurisdiction to act for a mentally incompetent member under limitations, if any, established by the court. Their actions are legally binding on the member.

1017 Impairment Of Function

A lessening or weakening of the capacity of the body or its parts to perform normally, according to accepted medical principles.

1018 Impairment Of Function, Latent

Impairment which is not manifested by current signs and/or symptoms, but which is of such a nature that there is reasonable certainty, according to accepted medical principles, that signs and/or symptoms will appear within a reasonable period of time.

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1019 Impairment Of Function, Manifest

Impairment which is evident by signs or symptoms.

1020 Inactive-Duty Training

a. Inactive-Duty Training, as implemented in SECNAVINST 1001.33A (NOTAL), comprises:

(1) Duty prescribed for Reserves by the Secretary concerned under 37 U.S.C. 206 and any other provisions of law; and

(2) Special additional duties authorized for Reserves by an authority delegated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned (10 U.S.C. 101(31)).

(3) It includes those duties when performed by Reserves in their status as members of the National Guard (10 U.S.C. 101(31)).

b. Inactive-duty training does not include work or study performed in connection with correspondence courses.

1021 Incurred While Entitled To Receive Basic Pay

a. "Incurred" refers to the date or time when a disease or injury is contracted or suffered, as distinguished from a later date, when the DES determines that a member has become UNFIT FOR DUTY as a result of such disease or injury. Physical disability due to natural progression of disease or injury is "incurred" at the time the disease or injury causing the disability is contracted. When the increase in physical impairment during service is in excess of that due to natural progression of the disease or injury, then the increase is due to aggravation by service.

b. "While entitled to receive basic pay" encompasses all types of duty which entitled the member concerned to receive active duty basic pay. It also includes any duty without pay which may be counted the same as duty with pay, such as reserve personnel drilling in non-pay billets. For purposes of administering disability benefits under 10 U.S.C., Chapter 61, midshipmen are not entitled to receipt of basic pay. In addition, members in an appellate or excess leave status are not

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entitled to receive basic pay. This definition shall not be construed to entitle any member not on active duty, who, at the time of separation from active duty was considered physically FIT FOR DUTY, to benefits under 10 U.S.C., Chapter 61, because of an increase in impairment occurring while the member was not entitled to basic pay.

1022 Injury

Damage or wound to the body, traumatic in origin.

1023 Member

Unless otherwise defined, a "member" includes a commissioned officer, commissioned warrant officer, warrant officer, aviation candidate or enlisted person of the regular or reserve forces, including a retired person of the naval service. The words "retired person" include members of the Fleet Reserve and Fleet Marine Corps Reserve who are in receipt of retainer pay. Midshipmen of the Navy are not members (10 U.S.C. 5001).

a. "Navy" means the U.S. Navy. It includes the Regular Navy, the Fleet Reserve and the Naval Reserve.

b. "Marine Corps" means the U.S. Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve and the Marine Corps Reserve.

c. "Member of the Naval Service" means a person appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

1024 Member, Enlisted

A person serving in an enlisted grade or rating (10 U.S.C. 5001 (a)(4)).

1025 Mental Incompetency

Mental incompetency is the condition of a member who has been found by medical authority designated in 2024 to be mentally incapable of managing his or her own financial or personal affairs. For the purposes of this instruction, mental incompetency and mental incapacitation are synonymous.

1026 Misconduct

For purposes of disability entitlements, misconduct consists of Intentional Misconduct or Willful Neglect as described in 1048 and 2081.

1027 Next of Kin:

Next of kin in order of preference: spouse; if no spouse, eldest child over age of majority (including children of a prior marriage); if there is no spouse and no child is over the age of majority, then the father or mother (when parents are living together, or separate after the member has entered the service, the father is normally considered the next of kin. When parents separate or divorce before the member's entry into the service, the parent having legal custody of the member will be considered the next of kin. If neither or both parents had legal custody, give preference to the parent the member resided with prior to entry into the service); if none of the foregoing, then the eldest sibling or other blood relative in that order. c

1028 Notice Of Eligibility

A document issued under SECNAVINST 1770.3A to a reservist authorizing medical care and/or incapacitation pay.

1029 Notification Of Decision

A document issued by the President, PEB or DIRNCPB informing the CHNAVPERS or CMC, as appropriate, of the final decision and disposition in a member's case.

1030 Not Physically Qualified

A Reservist, who has not been granted a Notice of Eligibility, is NOT PHYSICALLY QUALIFIED when he or she is unable, because of disease or injury, to perform the duties of his or her office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his or her employment on active duty.

1031 Office, Grade, Rank, or Rating

a. **Office.** A position of duty, trust, or authority to which an individual is appointed.

b. **Grade.** A step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation (10 U.S.C. 101(18)).

c. **Rank.** The order of precedence among members of the Armed Forces (10 U.S.C. 101(19)).

d. **Rating/Rate.** "Rating" means the name (such as "Boatswain's Mate") prescribed for members of the Navy in an occupational field. "Rate" means the name (such as Chief

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Boatswain's Mate) prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice) (10 U.S.C. 101(20)).

1032 Officer

"Officer" means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade (10 U.S.C. 5001(a)(5)).

1033 Officer, Commissioned

"Commissioned Officer" means a member of the naval service serving in a grade above warrant officer, W-1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W-1, and a temporary appointment in a grade above warrant officer, W-1 (10 U.S.C. 5001(a)(6)).

1034 Officer, Warrant

"Warrant Officer" means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade (10 U.S.C. 5001(a)(7)).

1035 Optimum Hospital Improvement

The point during hospitalization when the patient's medical fitness for further active service can be determined, and it is considered probable that further treatment for a reasonable period in a military hospital will not result in material change in the patient's condition which would alter his or her ultimate type of disposition or amount of separation benefits.

1036 Percentage Of Disability

The percentage ratings of the VASRD, as modified by enclosure (4) of this instruction, represent, as far as can practicably be determined, the average impairment in earning capacity resulting from diseases and injuries, and their residual conditions in civil occupations.

1037 Permanent Limited Duty (PLD)

A specified period of limited duty authorized by the CHNAVPERS or CMC for active duty members found UNFIT FOR DUTY by the PEB.

1038 Physical Disability

Any impairment due to disease or injury, regardless of degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity. The term "physical disability" includes mental disease, but not such inherent defects as behavioral disorders, personality disorders, and primary mental deficiency.

1039 Preponderance Of Evidence

That evidence which tends to prove one side of a disputed fact by outweighing the evidence on the other side. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, preponderance means a superiority of evidence on one side or the other of a disputed fact. It is a term which refers to the quality, rather than the quantity of the evidence.

1040 Presumption

An inference of the truth of a proposition or fact, reached through a process of reasoning and based on the existence of other facts. Matters which are presumed need no proof to support them, but may be rebutted by evidence to the contrary.

1041 Proximate Result Of Active Duty

Arising out of service or may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty or inactive duty training, as the case may be.

1042 Reserve Component

Either the United States Naval Reserve or the United States Marine Corps Reserve (10 U.S.C. 261).

1043 Secretary

Unless otherwise qualified, refers to the Secretary of the Navy.

1044 Temporary Disability Retired List (TDRL)

The TDRL is a list maintained by the CNO or CMC of members who are UNFIT FOR DUTY because of physical disability, who meet the requirements of 10 U.S.C., Chapter 61 for disability retirement, and whose disabilities are not yet determined to be stabilized or permanent.

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1045 Temporary Limited Duty (TLD)

A specified period of limited duty, not to exceed 24 months, authorized at a medical treatment facility by a medical board for cases in which the prognosis is that the member can be restored to full duty within the specified period.

1046 Trustee

a. 37 U.S.C. 602 authorizes the SECNAV to appoint any person to receive active duty or retired pay of an incompetent member for the benefit of the member. That authority has been delegated to the JAG.

b. A trustee appointed by the JAG for the purposes of 37 U.S.C. 602 is a person who is authorized to receive and distribute the active duty or retired pay of a member of the Navy or Marine Corps, for the benefit of the member, who has been found mentally incapable of managing his or her financial affairs. This person, or the primary next of kin, has authority to act for the member in electing the member's options following receipt of PEB findings.

1047 Unauthorized Absence

Any absence from duty without authority such as contemplated under Articles 85 and 86 of the UCMJ.

1048 Unfit For Duty

A member is UNFIT FOR DUTY when he or she is unable, because of disease or injury, to perform the duties of his or her office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his or her employment on active duty.

1049 Willful Neglect

The intentional, unjustifiable, and inexcusable failure of the individual to perform some act or duty:

a. required in the occupation in which the individual was engaged at the time of incurring a physical impairment, or

b. required of the individual as a legal obligation, or

c. which could be reasonably evident to the average individual as required to protect such an individual from foreseeable injury or harm.

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2052 CRITERIA FOR MAKING UNFITNESS DETERMINATIONS

In determining a member's fitness, all relevant evidence is to be considered in assessing the member including the circumstances of referral.

a. When a referral or physical evaluation immediately follows acute, grave illness or injury, the medical board may stand alone, particularly if medical evidence establishes that continued service would be deleterious to the member's health or not in the best interest of the service.

b. Particularly in cases of chronic illness, performance documents may be expected to reflect accurately a member's capacity to perform.

c. If the evidence establishes that a member adequately performed the duties of his or her office, grade, rank, or rating until the time the member was referred for PEB evaluation, he or she might be considered FIT FOR DUTY even though medical evidence indicates questionable physical ability to perform duty.

d. Regardless of the presence of illness or injury, inadequate performance of duty, by itself, must not be considered as evidence of physical unfitness unless it appears that there is a cause and effect relationship between the two factors. See 2041.

2053 FLAG AND MEDICAL CORPS OFFICERS

An officer in pay grade 0-7 or higher or a medical officer in any grade will not be found UNFIT FOR DUTY if he or she can be expected to perform satisfactorily in an assignment appropriate to his or her grade, qualifications, and experience.

2054 PRESENCE OF DISEASE, INJURY, OR PHYSICAL DISABILITY

a. : The mere presence of physical disability does not, in itself, require a finding of UNFIT FOR DUTY. It is necessary to correlate the nature and degree of functional impairment produced by physical disability with the requirements of the duties to which the member may reasonably expect to be assigned by virtue of his or her office, grade, rank, or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea or combat assignments). Also see 1047. (R

b. A member who has an impairment which renders him or her unable because of physical disability to perform the duties to which he or she would normally be assigned by virtue of his or

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her office, grade, rank or rating may be considered to be UNFIT FOR DUTY, even though he or she may be physically capable of performing all of his or her duties at the moment. Conversely, a member convalescing from an illness or an injury, and who is likely to recover to a degree which would permit him or her to perform all of his or her duties in the near future, will be considered to be FIT FOR DUTY.

2055 ENTRY INTO THE NAVAL SERVICE WITH A WAIVER FOR A KNOWN MEDICAL CONDITION OR PHYSICAL DEFECT

A member who entered military service with a waiver for a medical condition or physical defect that usually is cause for referral to the PEB shall normally not be considered UNFIT FOR DUTY because of physical disability provided the condition has remained essentially unchanged and has not interfered with the performance of duty. If, however, based on accepted medical principles, the condition represents a decided medical risk which would probably prejudice the best interests of the Government were the individual to remain in military service, separation without benefits may be appropriate, if initiated within 6 months of initial entry on active duty. Entry physical standards shall be used in separating individuals with pre-existing medical conditions. A member with a waiver after 6 months will be processed by the PEB in a manner consistent with other disability cases.

2056 PRESUMPTION OF FITNESS IN CONNECTION WITH MEMBERS BEING PROCESSED FOR NON-DISABILITY RETIREMENT OR SEPARATION

The purpose of the disability statutes is to compensate those members who were, due to physical disability, unable to complete their careers and qualify for normal retirement benefits. When a member continued to perform the normal duties of his or her office, rank, grade, or rating until commencing processing for non-disability retirement or separation, it shall be presumed that he or she was FIT FOR DUTY. This presumption can be overcome if it can be established by a preponderance of evidence that the member, in fact, was physically unable to adequately perform the duties of his or her office, rank, grade, or rating even though he or she was improperly retained in that office, rank, grade, or rating for a period of time; or, if an acute, grave illness or injury, or other deterioration of physical condition occurred immediately prior to or coincidentally with non-disability retirement or separation processing which rendered him or her UNFIT FOR DUTY.

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**2057 EVIDENTIARY STANDARD USED IN FITNESS VS UNFITNESS
DETERMINATION**

a. A factual finding that a service member is UNFIT FOR DUTY depends on the evidence that is available to support that finding. The quality of evidence is usually more important than quantity. All relevant evidence must be weighed in relation to all known facts and circumstances which prompted referral for disability evaluation. Findings will be made on the basis of objective evidence in the record as distinguished from personal opinion, speculation or conjecture. When the evidence is not clear concerning a member's condition, an attempt will be made to resolve doubt on the basis of further objective investigation, observation, and evidence.

b. Findings with respect to fitness or unfitness for military service will be made on the basis of preponderance of the evidence. Thus, if a preponderance of the evidence indicates unfitness, a finding to that effect will be made. If, on the other hand, a preponderance of the evidence indicates fitness, a finding of FIT FOR DUTY will be made, and the member may not be separated or retired by reason of physical disability. (D)

2058 INACTIVE-DUTY RESERVISTS WITH NO NOTICE OF ELIGIBILITY

When an inactive-duty reservist has not been granted an NOE, then the PEB shall only determine and record whether the member is PHYSICALLY QUALIFIED or NOT PHYSICALLY QUALIFIED.

2059 - 2069 RESERVED

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PART E - ELIGIBILITY FOR DISABILITY BENEFITS AND RELATED POLICIES

2070 CONDITIONS NOT CONSTITUTING PHYSICAL DISABILITY

Only those conditions which constitute physical disabilities may be considered by the PEB. A listing of conditions not constituting physical disability is included in enclosure (1) to this instruction.

2071 NON-MILITARY MEDICAL RECORDS

A member may be processed for discharge but the PEB may not award disability benefits for an injury or disease which was treated by a non-military medical doctor or facility unless the member signs a release to allow the medical board or PEB to obtain all records relating to that treatment.

a. When a case is being processed by the PEB in which the member has refused to release all medical records, the PEB shall determine whether the member is FIT FOR DUTY or UNFIT FOR DUTY. If the member is found FIT FOR DUTY, see 2160. If the member is found UNFIT FOR DUTY, then only those conditions not related to the non-military medical treatment, if any, shall be rated. No rating or disability benefits shall be assigned to those conditions for which the member has refused to release non-military medical records.

b. Prior to the PEB issuance of a Notice of Decision in such a case, the President, PEB, must be satisfied that the member has been counseled that the refusal to release non-military medical records will result in the prohibition of disability rating and compensation for the injury(ies) or disease that was treated by the non-military medical facility.

2072 DISCIPLINARY OR MISCONDUCT ADMINISTRATIVE ACTION

R) Disciplinary separation is not precluded by the disability statutes and such separations as described herein supersede disability separation or retirement. Whenever a member is being processed for disability evaluation and, at the same time, administrative involuntary separation for misconduct, disciplinary proceedings which could result in a punitive discharge, or an unsuspended punitive discharge is pending, disability evaluation shall be suspended and the non-disability action monitored by the CHNAVPERS/CMC, as appropriate. If the action taken does not include punitive or administrative discharge for misconduct, the case will be forwarded or returned to the PEB for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the member's terminated health

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would, by the same rationale, tend to establish the existence of mental illness prior to service in those cases where intemperate use of drugs prior to service is admitted by the member. Brief experimentation with marijuana would not, in itself, meet this criterion.

2089 UNREASONABLE REFUSAL OF MEDICAL, DENTAL, OR SURGICAL TREATMENT

a. If a member unreasonably refuses to submit to medical, dental, or surgical treatment, any unfitting disability that proximately results from such refusal is incurred as a result of the member's willful neglect. However, unreasonable refusal under this section may only equate to willful neglect when the member would be FIT FOR DUTY if he or she had submitted to or complied with the treatment regimen. Additionally, a member who refuses medical treatment on a bona fide religious basis is eligible for disability benefits; refusal shall not be considered willful neglect. (A)

b. The PEB must determine whether refusal of treatment was or was not, in fact, reasonable regardless of any opinion expressed in a medical board report. If the PEB finds that the refusal of treatment was unreasonable, the member shall, unless a MEDICAL BOARD CERTIFICATE RELATIVE TO COUNSELING ON REFUSAL OF SURGERY AND/OR TREATMENT (NAVMED 6100/4) is already contained in the record, be notified before a finding of willful neglect may be made, and advised that continued refusal will result in a finding of willful neglect and loss of disability benefits. (A)

2090 PRESUMPTION OF MENTAL COMPETENCE

All persons are presumed to be mentally competent and thus responsible for their acts. Clear and convincing evidence is required to overcome this presumption.

2091 MENTAL RESPONSIBILITY CONSIDERATIONS

A member may not be held responsible for his or her acts and their foreseeable consequences if, at the time of commission of such acts, as a result of severe mental disease or defect, he or she was unable to appreciate the nature and quality or the wrongfulness of the acts. A member's conditions not amounting to a lack of mental responsibility as defined above does not preclude holding a member responsible for his or her acts and their foreseeable consequences. As used in this paragraph, the terms "mental disease" and "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Thus, an injury which was the proximate result of acts performed while the member was mentally impaired as a result of

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voluntary ingestion of an hallucinogenic drug would be deemed to have been incurred as a result of the member's own misconduct since certain properties of such drugs are notorious and their use is prohibited by Article 1151, U.S. Navy Regulations.

2092 SUICIDE ATTEMPTS

In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, shall be considered to create a strong inference of lack of mental responsibility.

2093 INTENTIONAL SELF-INFLICTED INJURY

An intentional self-inflicted injury, other than suicide discussed above, is deemed to be incurred as the result of the member's own misconduct, unless lack of mental responsibility is otherwise shown.

2094 INACTIVE-DUTY RESERVIST WITHOUT A NOTICE OF ELIGIBILITY

An inactive-duty reservist is not eligible to receive disability benefits unless he or she has been granted an NOE pursuant to SECNAVINST 1770.3A.

2095 PASSENGER MISCONDUCT

- A) In accordance with 2082, injuries sustained by a passenger will be presumed not to have occurred as a result of his or her own misconduct. However, subject to the criteria set forth in 2081, this presumption may be overcome where clear and convincing evidence establishes that the passenger knew or should have known that the driver was incapable of operating a motor vehicle safely due to the intemperate use of alcohol or illegal use of a drug.

- A) **2096 - 2099 RESERVED**

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2116 ZERO PERCENT RATINGS AND MINIMUM RATINGS

a. Zero Percent Ratings. Occasionally, a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VASRD under the applicable code number. A zero percent rating may be applied in such cases even though the lowest rating listed is 10 percent or more, except when "minimum ratings" are specified. It should be noted that the zero percent rating does not preclude the award of compensation as prescribed by law for ratings of less than 30 percent.

b. Specified Minimum Ratings. In some instances, the VASRD provides a "minimum rating," without qualification as to residuals or impairment. Diagnosis alone is sufficient to justify the minimum rating. Higher ratings may be awarded in consonance with degree of severity, but no rating lower than the "minimum" may be used if the diagnosis is satisfactorily established.

c. Minimum Ratings For Residuals. The VASRD provides for minimum rating for "residuals" in certain medical conditions. The instructions may state "rate residuals, minimum _____ percent," or may specify what impairment to rate and give a minimum rating for that impairment. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise, a zero percent is appropriate.

2117 ASSIGNMENT OF AGGRAVATION FACTORS WHEN PRESCRIBED TREATMENT IS REFUSED OR OMITTED

Although he or she would not be FIT FOR DUTY, a member's degree of disability may have been aggravated or increased by an unreasonable failure or refusal to submit to medical or surgical treatment or therapy, to take prescribed medications, or to observe prescribed restrictions on diet, activities, or the use of alcohol, drugs or tobacco. The compensable disability rating may be reduced for non-compliance to compensate for such aggravation or increase when the existence and degree of aggravation are ascertainable by application of accepted medical principles, and where it is clearly demonstrated that:

a. the member was advised clearly and understandably of the medically proper course of treatment, therapy, medication or restriction; and

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b. the member's failure or refusal was willful or negligent, and not the result of mental disease or of physical inability to comply.

2118 USING THE COMBINED RATINGS TABLE

When a member has more than one compensable disability, the percentages are combined rather than added (except when a "Note" in the VASRD indicates otherwise). This results from the consideration of the individual's efficiency, as affected first by the most disabling condition, then by the less disabling conditions in the order of their severity. Thus a person having a 60 percent disability is considered to have a remaining efficiency of 40 percent. If he or she has a second disability rated at 20 percent, then he or she is considered to have lost 20 percent of that remaining 40 percent, thus reducing his or her remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent. The combined rating for any combination of disabilities can be determined by first arranging the disabilities in their exact order of severity and then referring to the combined ratings table on pages 10 and 11 of the VASRD in accordance with the following instructions:

a. Combining Two Percentages. Enter the table by locating the highest percentage in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the second percentage. (Example: 40 combined with 20 equals 52.)

b. Combining Three Or More Percentages. First, combine the first two percentages as above. Second, re-enter the table by locating that combined value in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the third percentage. (Example: 50 combined with 30 equals 65. 65 combined with 20 equals 72.) If there are additional percentages, the second step is repeated using the new combined value and the next percentage.

c. Converting Combined Ratings. After all percentages have been combined, the resulting combined value is converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. If the combined value included a decimal fraction of 0.5 or more as a result of applying the bilateral factor, the fraction is converted to the next higher whole number; otherwise the decimal fraction is disregarded.

(Example: If the combined value is 64.5, first round off the fraction to make the combined value 65, which in turn is rounded off to 70. If the combined value is 64.4, the decimal fraction is disregarded and the combined value of 64 rounded off to 60.)

d. **Highest Calculation.** Whenever the combined ratings table is utilized, a mathematical calculation shall also be made. Whichever rating is highest will be awarded to the member.

2119 BILATERAL FACTOR

When a partial disability results from injury or disease of both arms, or both legs, or of paired skeletal muscles, the rating for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value (called the Bilateral Factor) will be added (i.e., not combined) before proceeding with further combinations, or converting to degree of disability. The Bilateral Factor will be applied to such bilateral disabilities before other combinations are carried out, and the rating for such disabilities, including the Bilateral Factor as above, will be treated as one disability for the purpose of arranging in order of severity and for all further combinations.

a. The terms "arms" and "legs" are not here intended to distinguish between the arm, forearm, and hand, or the thigh, leg, and foot, but to describe to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh (for example, amputation), and one of the left foot (for example, pes planus), the Bilateral Factor applies, and similarly whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment. (Except as noted in c below).

b. The correct procedures when applying the Bilateral Factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the four extremities in order of their individual severity and apply the Bilateral Factor by adding, not combining, 10 percent of the combined value thus attained.

c. The Bilateral Factor is not applicable unless there is partial disability of compensable degree in each of two paired extremities or paired skeletal muscles. Special instructions regarding the applicability of the Bilateral Factor are provided in various parts of the VASRD - Code 7114-7117, Code 8205-8412, etc. The Bilateral Factor is not applicable in skin disabilities rated under VASRD Code 7806.

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2120 USE OF VA CODE NUMBERS

The VA code numbers appearing opposite the listed ratable disabilities in the VASRD are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis. Great care must be exercised in the selection of the applicable code number and in its citation on the findings letter. Each rated disability is assigned its VA code number unless a hyphenated code is expressly authorized in paragraph 27 of the VASRD. It is not proper to use additional VA codes as a means of further describing defects. The written diagnosis entered on the findings letter should include all of the description needed to clearly show the extent, severity or etiology of the condition. In the selection of code numbers, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease itself; if the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus atrophic (rheumatoid) arthritis rated as ankylosis of the lumbar spine would be coded "5002-5289." In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology may be any combination of the medical examiner's or VASRD terminology which accurately reflects the degree of disability. Residuals of diseases or therapeutic procedures will not be cited without reference to the basis disease. Hyphenated codes are used only in these circumstances:

a. When the VASRD provides that a listed condition is to be rated as some other code, e.g., myocardial infarction rated as arteriosclerotic heart disease (7006-7005) or nephrolithiasis rated as hydronephrosis (7508-7509).

b. When the VASRD provides a minimum rating and the disability is being rated on residuals, e.g., multiple sclerosis rated as incomplete paralysis of all radicular groups (8018-8513).

c. When an unlisted condition is rated by analogy, e.g., spondylolisthesis rated as sacroiliac injury and weakness (5294-5299). When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code

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number will be "built-up" as follows: the first two digits will be selected from that part of the schedule most closely identifying the part, or system, of the body involved; the last two digits will use "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy.

**2121 MODIFICATION OF SPECIFIC PARTS OF THE VASRD: RATING
PRINCIPLES**

Enclosure (4) of this instruction contains instructions and explanatory notes which modify specific parts of the VASRD. These instructions and explanatory notes are listed according to paragraphs and code numbers in the VASRD. Only those portions which require special comment, or those which have been the cause of misunderstanding in the past, are included.

2122 - 2149 RESERVED

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PART G - POLICIES CONCERNING COMBAT-RELATED INJURIES

2150 PROVISION OF COMBAT-RELATED OPINION

a. Once a member has been rated, the PEB shall provide a combat-related opinion for the member which shall be binding on the appropriate finance center in the absence of guidance to the contrary from the Internal Revenue Service or from the JAG. CHNAVPERs and CMC, as appropriate, shall communicate this opinion to the separating activity and to the appropriate finance center.

b. No combat-related opinion need be made when it is clear from the record of proceedings that the member was on active duty with the armed forces on 24 September 1975.

c. The PEB will affirmatively state, for contingent use in civil service matters by the JAG, if the disability is a result of an instrumentality of war or incurred as a direct result of armed conflict.

2151 GENERAL

Retired and severance pay awarded to members who were not a member of an armed force or under a binding contract to become such a member on 24 September 1975 is considered taxable under Section 104 of the Internal Revenue Code, found as 26 U.S.C. 104. An exception to this provision exists in Section 104(b)(1)(c) for a member receiving separation or retired pay by reason of a combat-related injury.

2152 COMBAT-RELATED INJURY

The term "combat-related injury" as defined in 26 U.S.C. 104(b)(3) includes four separate categories. It means personal injury or sickness:

- a. Incurred as a direct result of armed conflict,
- b. Incurred while engaged in extrahazardous service, or
- c. Incurred under conditions simulating war; or
- d. Caused by an instrumentality of war.

2153 DIRECT RESULT OF ARMED CONFLICT

There must be a direct causal relationship between participation in armed conflict and the disabling injury. A member is within the exemption only if the disability for which retired or separated is a direct result of armed conflict in which the

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changed to NOT PHYSICALLY QUALIFIED, then the member is entitled to receive a new notification and to be presented with his or her applicable options. If a member does not request a hearing or a hearing request is denied, then the records review findings become final.

d. **NOT PHYSICALLY QUALIFIED Findings:**

(1) Accept the findings and waive a hearing. In this case, the records review findings are then referred to the President, PEB, who shall issue and promulgate them.

(2) Disagree with the records review findings and request a full and fair hearing. In this case, the President, PEB, will refer the case to a hearing panel.

5128 ACCEPTANCE/NON-ACCEPTANCE OF FINDINGS

a. Following counseling as to available options, the member shall indicate acceptance or non-acceptance of the findings of records review.

b. In those instances in which the member can fully understand the findings following records review, but due to physical impairment, is unable to accept or non-accept the findings by signing his or her name, the member's election will be valid if witnessed by a notary, or by two persons, one of whom may be the treating physician.

c. **Incompetents.** When the member has been determined to be incapable of managing his or her financial affairs by a board of medical officers convened and constituted in accordance with MANMED, Chapter 18, the member's spouse, next of kin, or court appointed guardian will be counseled and afforded the opportunity to exercise the member's options as discussed in 5127.

d. See 2024 for other special situations in which a member is mentally unable to comprehend and make elections concerning findings following records review.

5129 CONDITIONAL ACCEPTANCE

If UNFIT FOR DUTY, notwithstanding 5128 above, a member may conditionally accept records review findings. Such an acceptance means that if the government does not comply with the condition requested, then the findings are not accepted. The member must indicate whether he or she desires a formal hearing if the condition is not met.

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5130 PRESUMED ACCEPTANCE

If no response to the Findings Letter is received by the PEB within 15 calendar days of hand delivery or receipt of certified mail by the member or legal representative concerned, then acceptance of the records review findings is presumed. Receipt by a member's attorney of the written findings constitutes receipt by the member. In the case of personnel on the TDRL only, acceptance is also presumed 15 calendar days after attempted unsuccessful delivery of certified mail to the last known address of the member. Once acceptance is presumed, the President, PEB, shall promulgate the findings.

5131 ASSIGNMENT OF COUNSEL

a. General. There is no right to counsel at this stage. However, a member may be represented by counsel provided by the member at no expense to the Government.

b. Incompetents. A member who has been found mentally incapacitated/incompetent shall be represented by a designated Judge Advocate subsequent to disability evaluation by records review.

5132 - 5199 RESERVED

PART C - HEARINGS

5200 PURPOSE AND OVERVIEW

a. No member of the naval service, including reservists, may be retired or separated for physical disability without a formal hearing unless he or she waives it (10 U.S.C. 1214). As a matter of policy, although not required by statute, no member of the reserve component shall be separated for being NOT PHYSICALLY QUALIFIED without a formal hearing unless he or she waives the right. The PEB shall provide such hearings when required.

b. Hearings may also be conducted by the PEB as information gathering bodies for the development of cases when directed by the President, PEB or DIRNCPB under paragraph 6c(2) of the basic instruction, 5126b(2) or 5126b(4). The proceeding is non-adversarial and formal rules of evidence do not apply. Members of a hearing panel are charged with making findings concerning fitness and eligibility for disability benefits and must protect the interests of both the member and the government.

c. A hearing provides an opportunity for the member to present additional material to support his or her case. Once a hearing has convened, any preliminary findings of the Record Review Panel of the PEB are null and void and are of no precedential value to a panel or the member.

(A

5201 FUNCTIONS OF HEARING PANELS

a. To conduct formal hearings pertaining to disability evaluation of members of the naval service as required by 10 U.S.C. 1214 and this instruction;

b. To evaluate on the basis of formal hearings attended by a member and/or counsel:

(1) physical fitness (or physical qualification in the case of an inactive-duty member of the Naval or Marine Corps Reserve) of a member for active duty; and

(2) if found UNFIT FOR DUTY, the entitlement of the member to benefits authorized by 10 U.S.C., Chapter 61;

c. To refer hearing panel findings to the President, PEB for review, issuance and promulgation; and

d. To protect the privacy of individuals whose records are reviewed under SECNAVINST 5211.5D.

5202 PANEL COMPOSITION

a. A hearing panel shall normally be composed of three members, a Navy line officer, a Marine Corps officer, and a Medical Corps officer, all senior military officers selected on the basis of wide medical and/or military experience, proven performance and education. All Medical Corps officers assigned shall possess a wide cross-section of clinical experience.

b. All members of hearing panels shall be assigned by the DIRNCPB and report to the President, PEB.

c. The Presiding Officer for a hearing shall be a Navy line or Marine Corps officer in the grade of O-6 or above. While not mandatory, it is preferred that the Presiding Officer be of the same service as that of the member being considered.

d. The composition of panels shall be consistent and shall not be altered by reason of the grade, status or organization of a member under disability evaluation, except as specified in 2007, 5204, or by specific direction of the DIRNCPB.

5203 RESERVE MEMBERSHIP

See 2009a.

5204 ALTERNATE MEMBERS

a. In the absence of a principal member, an alternate member may sit on a panel. However, no more than one alternate may sit on any panel and the use of alternate members shall be limited as much as possible to preserve equity and consistency.

b. Alternate members must be in the grade of O-5 or above. An alternate line member may be of the same service as the Presiding Officer. However, one of the line officers on a panel must be of the same service as the member being evaluated.

c. Area or designated sub-area coordinators and Directors of Marine Corps Districts in which hearing panels are located shall designate in advance and provide alternate panel members as requested by the Administrators of hearing panels, acting for the President, PEB.

d. Changes in alternate member nominations shall be held to a minimum so as to retain as high a degree of expertise as practicable on the panels.

e. Alternates shall be carefully instructed in the provisions of this instruction by the Administrator. In

addition, an alternate must observe at least one full hearing, including deliberations, before actually sitting as a panel member. A prospective alternate may not discuss the case or vote while observing deliberations.

5205 ADMINISTRATOR

A panel member at each hearing panel site shall be assigned as Administrator. He or she shall be responsible for the leadership and management of day-to-day panel affairs.

5206 COUNSEL

Each panel shall be assigned the continuous services of no less than two judge advocates for a period of not less than 6 months. They shall act as Counsel for members appearing before the panels. These Counsel shall be provided from the staffs of appropriate Naval Legal Service Offices, or from such other sources as may be designated by the JAG. They shall be qualified under 10 U.S.C. 827b (Article 27(b), UCMJ). The principles attendant to the use of alternate members in 5204d, shall apply to military lawyers as well.

5207 COUNSEL FOR THE PANEL

a. At the discretion of the Presiding Officer of a panel, an attorney who is not involved in a particular case as Counsel for the Member may be assigned as Counsel for the Panel. (D)

b. A civilian employed by the government who is a member of the bar of a Federal court or the highest court of a state may be appointed as Counsel for a Panel.

5208 DUTIES OF COUNSEL FOR THE PANEL

 (A)

Counsel for the Panel shall:

a. ensure that the panel has before it information to ascertain as accurately as possible:

(1) the circumstances in which the physical impairment was incurred, and

(2) the extent of the disability;

b. when requested by the Presiding Officer, present the evidence and represent the government during the hearing;

c. when requested by the Presiding Officer, question witnesses so as to impartially elicit all available evidence.

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5209 - 5219 RESERVED

5220 REPRESENTATION BY COUNSEL

a. **Military Counsel**. In order to provide maximum pre-hearing preparation time, to minimize unnecessary travel and to avoid hearing delays, a military lawyer will be detailed as Counsel for the Member immediately subsequent to the receipt of a case by a panel. Members appearing before a hearing panel have the right to be represented by a designated military lawyer at no expense to the member. A military lawyer, other than those regularly assigned to the panel, shall be provided upon request only if reasonably available and at no additional expense to the government.

b. **Civilian Counsel**. Members appearing before a hearing panel have the right to be represented by Counsel of their own choice provided by the member and at no expense to the government. This right includes the ability of the member to choose a non-lawyer to represent him or her.

c. **Associate Counsel**. When a member (or legal guardian or next-of-kin in incompetent cases) elects counsel of his or her choice, the military lawyer assigned shall act as associate counsel if requested to do so.

5221 INDEPENDENCE OF MILITARY COUNSEL

Hearing panel members shall not limit or interfere with Counsel's ability to fully represent their clients in any way. The scope of Counsel's representation is a matter between the member and Counsel only.

5222 DUTIES OF COUNSEL FOR THE MEMBER

a. The military lawyer assigned as Counsel for a member shall represent the member being evaluated unless the member refuses counsel or elects other counsel of his or her choice. In the case of an incompetent, the military lawyer assigned shall act in that capacity in all cases except when a duly appointed guardian, spouse or next of kin obtains or requests other counsel.

b. A lawyer who acts as Counsel for the Member shall:

(1) confer with and fully advise the member of legal and other substantive considerations in his or her case;

(2) represent the member, presenting to the panel information and arguments in support of the member's case and

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interests;

(3) arrange for the presence of desired witnesses and evidence in support of the member's case;

(4) interview witnesses prior to the hearing and question them during the hearing;

(5) counsel the member regarding hearing panel findings and options open to the member, and recommend courses of action that are most favorable to the member which are consistent with the letter and intent of statutes, regulations and directives addressing disability evaluation and administration;

(6) advise the member and assist, if requested, in the submission of a request for PLD;

(7) advise the member of the requirements of a PFR;

(8) prepare or assist in the preparation of a PFR at the request of the member;

(9) prepare or assist in the preparation of an appeal of the combat-related/taxability opinion of the PEB at the request of the member;

(10) in the case of incompetents, fully inform the court-appointed guardian, or, if no guardian has been appointed by a court, the member's spouse or next of kin, of the legal and factual issues in the case and act following the wishes of the guardian, spouse or next of kin, as appropriate, if those wishes do not conflict with the proper exercise of the responsibilities of Counsel concerning the member's interests.

5223 PERSONAL APPEARANCE

Members appearing before a hearing panel have the right to personally appear unless such appearance is waived or would be injurious to health.

5224 WAIVER OF PERSONAL APPEARANCE

a. **Actual Waiver.** Members have the right to waive their personal appearance before a hearing panel. In such cases the member must be represented by Counsel during the hearing.

b. **Constructive Waiver.** After due notification of the time and place of a hearing, failure to appear before a hearing panel on the part of the member, his or her counsel, and, in incompetent cases, the guardian, spouse or next of kin, shall be

considered as a waiver by the member of his or her right to personally appear unless it is reasonably shown that the failure was through no fault of the party failing to appear. The hearing shall proceed "in absentia" and the Presiding Officer will include in the record a statement of the circumstances as well as evidence of notification.

5225 LATE APPEARANCES

Late appearances, while an "in absentia" hearing is in progress, shall be heard.

5226 ACCESS TO RECORDS

A member has the right to have access to all records pertinent to his or her case, to all reference material used by the hearing panel, and to be afforded a reasonable time, of not less than 12 hours, to review the records before the hearing.

5227 SCHEDULING OF HEARINGS

The Administrator of each panel shall establish the date and time of each hearing, subject to the following guidance:

a. Incompetent Cases. If, after counseling by Counsel for the Member, the guardian, spouse or next of kin, does not waive the right of the member to a hearing within 15 calendar days of counseling, the case shall be scheduled for a hearing.

b. All Others. Hearings will be held within 30 calendar days of receipt of the record.

c. Inadequate Information

(1) Hearings shall not be scheduled unless all necessary records will be available and ready for review by a panel and the member, his or her counsel, guardian, spouse or next of kin for a reasonable period prior to the commencement of the hearing.

(2) Each panel shall ensure that it has available the necessary information for competent decision.

d. Extensions

(1) An Administrator may authorize an extension of the above times upon presentation by the member or his or her counsel of substantial grounds for such extension. In such instances, the delay shall be the minimum reasonable on the basis of the grounds presented.

(2) Notwithstanding (1) above, except as specifically authorized by the President, PEB, each requested hearing shall be concluded within 45 days following receipt of the case at the hearing site.

5228 - 5249 RESERVED

5250 HEARINGS - PRESIDING OFFICER

Presiding Officers shall preside over all sessions of a hearing and shall speak for the panel in findings matters. The Presiding Officer is responsible for the accuracy and completeness of the records forwarded to the President, PEB.

5251 HEARINGS - OPEN SESSION AND CONDUCT

a. Hearings shall be conducted in open session unless, in the opinion of the Presiding Officer, such would be prejudicial to the objective of attaining a full and fair hearing, or a closed hearing is requested by the member.

b. Hearings shall be conducted with dignity and decorum and with the objective of eliciting all the facts bearing on a case. Witnesses shall be encouraged to contribute to this objective.

5252 HEARINGS - UNIFORM

Active duty personnel and inactive-duty reservists shall appear in uniform at hearings unless specifically excused by the Presiding Officer from doing so.

5253 HEARINGS - OATHS

Each panel member and Reporter shall act under oath or affirmation. Witnesses shall be sworn in by the Presiding Officer or by Counsel for the Panel if one is assigned.

5254 HEARINGS - INTERLOCUTORY ISSUES

Presiding Officers shall rule on all interlocutory questions except challenges. These rulings may be objected to by other panel members, in which case, the matter shall be decided by a majority vote of the members in closed session.

5255 HEARINGS - CHALLENGES

a. Any panel member may be challenged by an individual undergoing physical disability evaluation at any time during the hearing for cause stated to the panel. The Presiding Officer

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shall not receive a challenge to more than one member at a time. After disclosing grounds for a challenge, the challenging individual may examine the panel member. This examination shall be recorded verbatim. Counsel for the Panel, if assigned, may cross-examine the member who has been challenged. After all questions have been put and answered, any other evidence bearing on the panel member's fitness to serve shall be heard.

b. The burden of sustaining a challenge is on the individual who made the challenge. The challenged panel member shall withdraw when the hearing is closed to vote upon the challenge. One vote of the remaining members is enough to sustain the challenge. The panel shall decide the challenge according to the preponderance of the evidence. When a challenge is sustained, alternate panel members will be called by the Presiding Officer of the panel or the remaining senior member.

5256 HEARINGS - RECESSES AND CONTINUANCES

Presiding Officers may recess, adjourn, or grant a continuance, of a case where substantial reason is made apparent. However, a case may not be delayed for more than 24 hours without the approval of the Administrator.

5257 HEARINGS - PROCEDURAL GUIDE

A procedural guide issued by the DIRNCPB shall be followed in all hearings.

5258 HEARINGS - OBJECTIONS

Objections may be made to any action (other than a challenge) taken or proposed to be taken by a panel, as well as to the admission of testimony. Objections, when made, are recorded as part of the proceedings. The Presiding Officer must note in the record the ruling on any objections that may be offered. Objections are ruled upon by the Presiding Officer. However, if any other panel member dissents from the Presiding Officer's ruling, the objection is ruled upon by the entire panel in closed session. The ruling is the decision of the majority of the panel and is announced on the reopening of the hearing.

5259 HEARINGS - ADMISSION OF EVIDENCE AND TESTIMONY

a. Before taking testimony, the Presiding Officer shall, for the record, officially receive all papers pertaining to the case in open session. These papers may be inspected by the member and his or her counsel during the hearing.

b. A hearing panel shall consider all documentary evidence

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transmitted to it by proper authority. A panel, in addition, may require and examine records as may be in Department of the Navy files that relate to issues before the panel. All evidence having probative value as to the determination of issues may be considered. In consideration of the weight and probative value to be accorded evidence, the members of a panel are expected to utilize their background and experience, their common sense and their knowledge of human nature and behavior. In every case, the testimony of the member concerned shall be considered in connection with all the evidence adduced and given such weight as the panel may believe it merits. When the testimony presented at the hearing indicates that the member claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the panel, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until such development has been accomplished. Findings of a panel shall be based upon evidence consistent with a reasonable probability of truth.

c. Members undergoing disability evaluation before a hearing panel shall be permitted to introduce witnesses, depositions, documents, sworn (affidavits) or unsworn statements or other evidence in their behalf and to question all witnesses who testify at the hearing.

d. Members may make oral or written statements.

e. Members may elect not to offer evidence or testimony.

f. Members may not be required to sign any statement touching upon circumstances surrounding the origin, incurrence or aggravation of any disease or injury (10 U.S.C. 1219).

g. Members and witnesses introduced by them may be questioned by members of the panel regarding evidence or testimony submitted by them.

h. Testimony of witnesses shall be taken under oath or affirmation unless otherwise requested by the member, his or her counsel, guardian, spouse, or next of kin.

5260 HEARINGS - WITNESSES

A panel may obtain military witnesses whose presence is requested by the member or member's counsel, if witnesses are reasonably available and if, in the opinion of the panel, their testimony is essential or contributes materially to the case. Article 49,

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UCMJ (10 U.S.C. 849), is used in determining reasonable availability of witnesses. The use of affidavits or depositions to obtain testimony of witnesses is encouraged. A panel may obtain military witnesses considered necessary to complete its findings and to comply with the legal requirements of a full and fair hearing. To assure the attendance of a military witness, the Administrator of a panel will request the proper commander make the necessary arrangements for the timely presence of the witness, provided the witness is reasonably available. If the commander considers that the witness is not reasonably available, he or she shall provide a statement giving the reasons therefor, and this statement shall be appended to the record.

5261 HEARINGS - FINDINGS

a. Findings shall be reached through a majority vote of the panel members.

b. In arriving at findings, a panel shall comply with this instruction.

c. Each finding made, which is concurred in by a majority of a panel, shall constitute the PEB findings subsequent to legal review.

d. Votes of individual members shall be recorded in the panel's records of proceedings and findings.

e. Any dissenting member of a panel shall submit a minority rationale concerning those particulars in which he or she does not agree with the action of the panel. The rationale will become part of the record.

f. Findings shall be set forth in writing, in summary form, and attached to the record. They shall be signed by the Presiding Officer. Also, see 5282.

5262 HEARINGS - BASIS OF FINDINGS

a. Each panel shall make findings with regard to the physical fitness for active duty (or physical qualification for active duty in the case of an inactive-duty member of the Naval or Marine Corps Reserve) on the basis of a formal personal hearing conducted in the presence of the member being evaluated, unless such appearance is waived or would be injurious to health, and/or his or her counsel.

b. In connection with each formal hearing, a panel shall consider the following information when applicable:

- (1) physical evidence presented;
- (2) statements of the member, his or her counsel, and/or witnesses testimony;
- (3) medical board reports and associated documents, together with endorsements of convening authorities and statements of members referred for disability evaluation;
- (4) line of duty/misconduct determinations;
- (5) statements of service;
- (6) reports of periodic physical examination (TDRL);
- (7) reports of special consultations;
- (8) statements of non-medical information as to the observation by the reporting senior of performance of duty of the member being evaluated;
- (9) fitness reports and performance evaluations supplied by the CHNAVPERS or the CMC, as they apply to disability evaluation;
- (10) NOE's; and
- (11) any other pertinent matters prior to conclusion of the hearing.

5263 HEARINGS - ELIGIBILITY DETERMINATIONS

Each panel shall determine a member's statutory eligibility for benefits as required by 10 U.S.C., Chapter 61 and enclosure (2) to this instruction. These eligibility determinations shall be included in the record but, if eligible, need not be published to the member in the findings. These determinations are, if UNFIT FOR DUTY:

a. the disability (was)(was not) (incurred)(aggravated) while entitled to receive basic pay;

b. the disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

c. (select appropriate finding)

(1) the disability (is)(is not) the proximate result of active duty or inactive duty training (because of aggravation,

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when applicable), or

(2) the disability (was)(was not) incurred in line of duty in time of war or national emergency, or

(3) the member has over 8 years of active service, or

(4) the disability (was)(was not) (incurred)(aggravated) after 14 September 1978;

d. the disability (is)(may be) permanent; and

e. the disability is ratable in accordance with the VASRD and this instruction.

5264 HEARINGS - INADEQUATE INFORMATION

If a panel is unable to make findings because of inadequate information, the Presiding Officer shall take appropriate action to obtain the necessary information before proceeding further.

5265 HEARINGS - DELIBERATIONS

Upon completion of the presentation of a case, a panel shall be closed for deliberation. Except as provided in 5204e, no person, other than the voting members, shall be present during closed sessions. The voting members then arrive at the PEB findings as prescribed in this Part.

5266 FORMAT OF FINDINGS

a. Cases Of Active Duty Members And Inactive-Duty Reservists Who Have Been Issued A Notice Of Eligibility. The hearing panel shall determine that the member is FIT FOR DUTY or UNFIT FOR DUTY; and

(1) If the member is FIT FOR DUTY, panel evaluation is complete; or

(2) If the member is UNFIT FOR DUTY:

(a) The disability (was)(was not) (incurred) (aggravated) while entitled to receive basic pay;

(b) The disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

(c) The disability (is)(is not) stabilized at the

present degree of impairment,

(d) The disability is ratable at (percentage); and, if applicable,

(e) The disability (is)(is not) combat related as defined by section 104 of the Internal Revenue Code. See 2150 - 2156.

b. **Cases Of Inactive-Duty Reservists Not Eligible For Disability Benefits.** When the member is an inactive-duty reservist who is not eligible for disability benefits, under 10 U.S.C., Chapter 61, i.e., under SECNAVINST 1770.3A, the member has not been issued an NOE, the only findings to be made are:

(1) PHYSICALLY QUALIFIED, or

(2) NOT PHYSICALLY QUALIFIED for active duty in the Naval or Marine Corps Reserve.

5267 CATEGORIZATION OF FINDINGS

See 5011.

5268 NOTIFICATION TO MEMBER

a. When practical, every member appearing before a hearing panel will be notified orally of the findings of that panel either in open session or by his or her Counsel in person prior to leaving the site. Such oral notification shall be noted in the record of proceedings by the Presiding Officer.

b. The member should be specifically advised that:

(1) the hearing panel's findings are subject to an automatic review for error and legal matters before issuance by the President, PEB. PEB findings can only be challenged by means of a PFR or by Petition to the BCNR filed in accordance with enclosure (6) to SECNAVINST 1850.4C,

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(2) he or she will receive the final PEB findings and rationale from the President, PEB after review, and

(3) he or she shall have 15 calendar days from the date of receipt of the final PEB findings and rationale to submit a PFR, if desired, before the case is finalized and CHNAVPERS or CMC is notified of the disposition by means of a Notification of Decision Letter.

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5269 PERMANENT LIMITED DUTY (PLD) REQUESTS

See 5222b(6) and enclosure (8) to this instruction.

5270 DISAGREEMENT WITH HEARING PANEL FINDINGS

If a member disagrees with the findings after the hearing panel stage of disability processing, he or she may submit a PFR or Petition the BCNR. See enclosure (6) of this instruction. It is recommended that a member consult with Counsel.

5271 FINAL PHYSICAL EVALUATION BOARD FINDINGS

See 5005.

5272 - 5279 RESERVED

5280 RATIONALE

Since it is essential that the record clearly reflects facts sufficient to form the basis for the findings, a rationale shall be prepared and shall state the basis for the findings reached.

R) **5281 TRANSCRIPTS**

a. A verbatim transcript of a hearing shall be prepared and forwarded to the President, PEB only when:

- (1) a finding of misconduct is to be issued;
- (2) there is not a unanimous decision by the panel,
- (3) the case is a Special Interest case; or,

(4) a transcript is specifically requested by the President, PEB or DIRNCPB.

- A) b. A verbatim transcript is defined to include any oral mechanical recording, such as a cassette recording, of the proceedings from the time the proceedings are convened to the time they are adjourned. A typewritten transcript of the oral mechanical recording will be made only upon the approval and direction of the President, PEB. A duplicate copy of the oral mechanical recording will be made available upon the request of the member or designated counsel. It is the responsibility of the requestor to provide a receptor, such as a blank cassette, PEB, has the discretion to waive the requirement that the requestor provide a duplication receptor.

5282 DISPOSITION OF RECORDS

a. All records considered by a hearing panel, the panel's findings, rationale, transcript when required, and a proposed final PEB findings letter with proposed rationale as an enclosure thereto will be forwarded to the President, PEB.

b. A verbatim record on magnetic tape shall be kept of all hearings and retained at the hearing panel site for 7 years.

PETITIONS FOR RELIEF

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PETITIONS FOR RELIEF

6001 BASES FOR PETITIONS FOR RELIEF WITHIN THE DISABILITY EVALUATION SYSTEM

When the findings of the PEB become final or a member has been orally advised of hearing panel findings, members who have not been discharged or separated, and TDRL personnel, may Petition For Relief. Members who have been separated or permanently retired may Petition the Board for Correction of Naval Records (BCNR). The only bases for relief by means of Petition are:

- A) a. New Or Newly Discovered Evidence. Upon the presentation of new or newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which related to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as to merely affect the weight of evidence or credibility of witnesses or records; and which would have warranted a different finding or action had it been presented; new or newly discovered medical evidence to be accepted must be corroborated by competent medical authority;
- b. Fraud, Misrepresentation, Or Other Misconduct. Upon a showing that the directed disposition of an individual was based upon fraud, misrepresentation of material fact, or other misconduct of such nature that in the absence thereof a different finding would have been made or a different action taken; and
- c. Mistake Of Law. Mistake of law is a basis for relief, e.g., failure to accord an individual found unfit the opportunity for a formal hearing; a directed disposition which was without authority; a decision which is contrary to the great weight of evidence of record.

6002 WHO MAY PETITION

Requests for relief on the grounds set forth in 6001 above may be made by the individual concerned, by his or her legal representative or counsel, or by any cognizant authority of the naval establishment, excluding the DIRNCPB.

6003 FORMAT

- R) No particular format is required. However, a petition must be in writing, set forth the grounds for requesting relief, and state the relief desired. If a petition is based upon evidence which is not on record in the Department of the Navy, the evidence upon which it is based must be forwarded as an enclosure.

6004 WHERE TO FILE

a. For Members Who Have Not Been Discharged Or Separated.
Requests for relief will be made by "Petition For Relief" to the Director, Naval Council of Personnel Boards, 801 N. Randolph Street, Arlington, Virginia 22203-1989.

b. For Members Who Have Been Discharged Or Separated.
Requests for relief will be made by "Petition" to the Board for Correction of Naval Records (BCNR), using DD Form 149.

6005 TIME CONSTRAINTS

a. A "Petition For Relief" should be filed within fifteen calendar days of the receipt of a Findings Letter. In that members are normally separated within 20 days of the date the President, PEB, issues the Notification of Decision, members should not delay in preparing and filing such a petition. For example, if the member decides to petition based on the oral advisement of the hearing panel (see 5268), he or she should begin the petition without awaiting receipt of the Findings Letter.

b. A "Petition" to the BCNR must be filed in accordance with time limitations promulgated by that Board.

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Years On The Temporary Disability Retired List. If the member's 5 year period on the TDRL will soon terminate, or if, as a result of a periodic physical examination, the PEB determines that the disability of the member concerned has become stabilized or permanent as discussed in paragraph 2164 of enclosure (2) to this instruction, then the case shall be processed like any other case in accordance with this instruction (except that any retirement must be by transfer to the permanent retired list vice the TDRL). The final rating assigned may be the same, higher, or lower than that which was originally afforded the member. (A

7017 REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST

A member's name shall be removed from the TDRL when:

a. the PEB determines that:

(1) the member is FIT FOR DUTY, or

(2) the disability is currently ratable at less than 30 percent and the member has less than 20 years of active service, even though the disability is not stabilized, or

(3) maximum improvement has been achieved or the disability is permanent. (In any event, a member's case should be finalized by the fifth anniversary of placement on the TDRL).

b. the member is administratively removed by CHNAVPERS/CMC on the fifth anniversary of placement on the TDRL for failure to report for periodic examination.

7018 DISPOSITION AFTER PROCESSING BY THE PHYSICAL EVALUATION BOARD

a. **Retention On The TDRL.** The member maintains his or her same status on the TDRL until evaluation by the PEB after his or her next periodic physical examination or until administratively removed.

b. **Removal From The TDRL**

(1) **Administrative Removal.** See paragraph 7008 above.

(2) **Fit For Duty.** See paragraph 7019 below.

(3) **Separation.** See paragraphs 7019d and 7020 below.

(4) **Retirement.** See paragraph 7021 below.

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**7019 FIT FOR DUTY FOLLOWING EVALUATION OF PERIODIC PHYSICAL
EXAMINATION - REENLISTMENT OR REAPPOINTMENT**

If the PEB determines that a member is fit to perform duties, the following applies, provided the member consents:

a. To Members Of Regular Components

(1) **Enlisted Members.** An enlisted member of a regular component shall be reenlisted in his or her regular component provided he or she is otherwise qualified for reenlistment. An enlisted member of a regular component shall have both his or her status on the TDRL and disability retired pay terminated on the date preceding reenlistment in the regular component of which he or she was a member before being placed on the TDRL. Any such reappointment or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade or rating permanently held by the member at the time his or her name was placed on the TDRL, and may be in the rank, grade, or rating immediately above the rank, grade or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade, or rating, or will be credited with such years of service as the SECNAV may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his or her name on the TDRL.

(2) **Officers.** An officer of a regular component, if otherwise eligible, shall be recalled to active duty and, as soon as practicable, be reappointed to the active list of his or her regular component, even if this means that there will be a temporary increase in the number of officers authorized for his or her grade. Any such reappointment shall be in a rank or grade not lower than the rank or grade permanently held by the member at the time his or her name was placed on the TDRL, and may be in the rank or grade immediately above the rank or grade permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank or grade, or will be credited with such years of service as SECNAV may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his or her name on the TDRL. An officer in a regular component shall have disability retired pay terminated on the date preceding recall to active duty.

b. To Members Of Reserve Components. A member of a reserve component shall be reappointed or reenlisted as the case may be, in the reserve component. A member of a reserve

component, whether officer or enlisted, shall have his or her status on the TDRL and disability retired pay terminated on the date preceding reappointment or reenlistment in a reserve component.

c. **To Members Of The Fleet Reserve Or Fleet Marine Corps Reserve.** A member of the Fleet Reserve or Fleet Marine Corps Reserve, who is found FIT FOR DUTY, shall resume his or her status in the Fleet Reserve or Fleet Marine Corps Reserve in the grade held when placed on the TDRL, or the next higher grade if considered qualified therefor in view of 10 U.S.C. 1210.

d. **When A Member Does Not Consent To Reappointment Or Reenlistment.** If a member does not consent to reappointment or reenlistment, his or her status on the TDRL and disability retired pay shall be terminated as soon as practicable.

7020 DISABILITY LESS THAN 30 PERCENT FOLLOWING EVALUATION OF PERIODIC PHYSICAL EXAMINATION

a. **Separation.** A member on the TDRL who has less than 20 years of active service computed under 10 U.S.C. 1208 and a physical disability ratable at less than 30 percent disability (but continues to render him or her UNFIT FOR DUTY) under the VASRD in use at the time of determination shall be removed from the TDRL and may be separated under 10 U.S.C. 1203 or 1206 whichever applies in accordance with 10 U.S.C. 1210(e). This is without regard to the stability of the unfitting condition.

b. **Severance Pay.** If the disability is ratable at less than 30 percent but continues to render the member UNFIT FOR DUTY, and if the member has served at least 6 months, but less than 20 years of active duty (and will not be entitled to retired pay or retainer pay by other provisions of law), he or she will be discharged with severance pay computed in accordance with 10 U.S.C. 1212.

c. **Exceptions To Separation With Severance Pay**

(1) **Reversion To Former Status - Members Of The Fleet Reserve Or Fleet Marine Corps Reserve.** A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who has 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C., Chapter 61, shall be given an opportunity to request that his or her name be removed from the TDRL and that his or her status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed.

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(2) **Transfer To Fleet Reserve Or Fleet Marine Corps**

- R) **Reserve. Members having completed 20 years or more of active service under 10 U.S.C. 6330.** A member on the TDRL who has 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C., Chapter 61, shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if the member is eligible for transfer under 10 U.S.C. 6330.

(3) **Transfer To Inactive Status List.** Officers and enlisted members of the Naval and Marine Corps Reserve on the TDRL who have at least 20 years of service computed under 10 U.S.C. 1332 and who, as a result of a periodic physical examination, are determined to be entitled to severance pay under 10 U.S.C., Chapter 61, shall be given an election, instead of being separated, to request transfer to the inactive status list under 10 U.S.C. 1209 and 1335, to receive retired pay at age 60.

7021 PERMANENT RETIREMENT

a. **Members With 20 Years Or More Of Service Computed Under 10 U.S.C. 1208.** If, as a result of a periodic examination or upon final determination, it is determined that a member's physical disability is of a permanent nature and if he or she has at least 20 years of service computed under 10 U.S.C. 1208, the member's name shall be removed from the TDRL and he or she shall be retired under 10 U.S.C. 1201 or 1204, whichever applies, with retired pay computed under 10 U.S.C. 1401.

b. **Members With Less Than 20 Years Of Service Computed Under 10 U.S.C. 1208.** If, as a result of a periodic examination, or upon final determination, it is determined that the member's physical disability is of a permanent nature and is at least 30 percent under the VASRD (as modified by this instruction) in use at the time of the determination, the member's name shall be removed from the TDRL and he or she shall be retired under 10 U.S.C. 1201 or 1204 whichever applies.

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c. UNFIT FOR DUTY members may be retained to meet shortages against authorized strength in an enlisted skill, competitive category, designator or specialty, or a military occupational field or specialty, provided they can perform required duties in an authorized billet for that skill.

d. UNFIT FOR DUTY members may be retained to complete a current tour of duty or to provide continuity in key billets pending relief.

e. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a medical treatment facility (MTF), to meet the need for that specific type of condition in a graduate medical education program at a specific MTF that cannot be met at that MTF by other authorized means and is essential to maintaining program accreditation. UNFIT FOR DUTY members may also be retained for MTF-specific medical research protocols. In each case, the request for retention must be fully documented to demonstrate the essentiality and must be approved by the SURGEN and the CHNAVPERS or CMC, as applicable.

f. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a MTF, to complete a current episode of treatment at a specific MTF when the continuity of care is deemed essential for the following reasons. In each case, the request must be fully documented and approved by the SURGEN and the CHNAVPERS or CMC, as applicable.

(1) Medical specialties or facilities are not available in the VA system,

(2) Transportation to another medical facility is medically contraindicated, or

(3) Transfer to the VA would result in abandonment of care because of VA caseload.

g. CHNAVPERS or CMC shall establish the termination date of the PLD period when authorizing PLD.

8004 RETIREMENT ELIGIBLE MEMBERS

Members with over 20 years of active service shall not be continued on active duty solely to increase their monetary benefits, nor shall they be continued unless their employment is justified as being of value to the naval service under the criteria in 8003.

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8005 INACTIVE-DUTY RESERVISTS

a. There is no Permanent Limited Duty (PLD) status for inactive duty reservists.

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b. Those inactive duty reservists who have been found NOT PHYSICALLY QUALIFIED (NPQ) and who have 18 but less than 20 qualifying years of service for retirement may be retained in the Standby Reserve (Active Status List). While in the Standby Reserve, the member may complete correspondence courses until attaining 20 qualifying years for retirement or completion of two full anniversary years, whichever occurs first.

8006 RETENTION IN PERMANENT LIMITED DUTY STATUS TO COMPLETE SERVICE OBLIGATION

CHNAVPERS and CMC will normally retain UNFIT FOR DUTY members on active duty in a PLD status for the period required to complete their active service obligation for:

a. enlisted education and training, including Enlisted Education Advancement Program, initial and advanced skill training schools which require obligation beyond initial enlistment contract, nuclear power field, advanced electronic field, and advanced technical field programs and similar programs. The CHNAVPERS or CMC may waive this requirement on a case by case basis when, as the result of a disabling condition, there is no billet in which disabled members can adequately perform the required duties.

b. funded education programs including Naval Academy, NROTC, Armed Forces Health Professions Scholarships, Uniformed Services University of Health Sciences and equivalent funded education programs; advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency (including fellowships), flight training, naval flight officer training, and equivalent programs. The ASN (M&RA) may waive the requirement in cases where the CHNAVPERS or CMC demonstrates that, as a result of the disabling condition, there is no billet in which the disabled officer can adequately perform the required duties.

8007 VOLUNTARY RETENTION

The CHNAVPERS and the CMC may also, upon a member's request, particularly from a member with over 18 years but less than 20 years of active service, retain UNFIT FOR DUTY members in PLD status when such retention is consistent with the guidance in 8003 and is in the best interests of the service and the individual.

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8008 REQUESTING PERMANENT LIMITED DUTY (PLD) STATUS

UNFIT FOR DUTY members, who desire continuation on active duty in PLD status, should submit a request in writing to the President, PEB. The request may be in the form of a brief signed statement appended to the Findings Letter, typed on the Findings Letter itself, or submitted by a DES Counselor or Counsel for a Member. If PLD status is a condition of accepting a finding of UNFIT FOR DUTY as provided in paragraph 6c(4) of the basic instruction and 5129, the member must also indicate whether he or she desires a formal hearing if the PLD condition is not met. (R)

8009 PROCESSING OF PERMANENT LIMITED DUTY REQUESTS

a. If the President, PEB receives a request for PLD status from a member prior to issuing the final determination in a disability case, the President shall suspend disposition action and refer the request for continuance on active duty to the CHNAVPERS or to the CMC, as appropriate, along with a recommendation as to whether or not continued duty will constitute a hazard to the member or others.

b. If a member requesting continuation has not traveled to a hearing site at government expense for a scheduled hearing, the President, PEB, shall delay any planned hearing for 30 days from the date the President receives the request.

c. If a member has traveled at government expense to a hearing site for a scheduled hearing and then submits a request for PLD status, the PEB shall complete processing of the case, if not already so accomplished. The request may be transmitted either in advance or with the completed case file to the President, PEB.

d. Upon referral by the President, PEB, the CHNAVPERS or the CMC, as appropriate, shall act on requests for PLD status, following the guidelines in this enclosure, within 20 days. (R)

8010 ACTION BY PRESIDENT, PEB FOLLOWING DECISION CONCERNING PERMANENT LIMITED DUTY STATUS

a. Permanent Limited Duty Authorized. When CHNAVPERS or CMC authorizes PLD for UNFIT FOR DUTY members, the President, PEB, shall take the following actions:

(1) For PLD of 6 months or less: the President PEB, shall, in the Notification of Decision letter, direct the PLD authorized, and effective the day following the last day of the PLD, the appropriate separation and the percentage of disability from the Findings Letter.

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(2) For PLD of more than 6 months: the President, PEB, shall, in the Notification of Decision letter, direct the authorized period of PLD, advise that disability separation and disability rating will be deferred until the end of the period of PLD, and require that the member be again referred to the DES for reevaluation as set forth in 8012.

b. **Permanent Limited Duty Not Authorized.** If the CHNAVPERS or CMC does not authorize PLD, the President, PEB, shall complete normal processing of the case.

8011 MONITORING MEMBERS RETAINED IN PERMANENT LIMITED DUTY STATUS

An UNFIT FOR DUTY member continued in a PLD status shall be closely observed to assure that further continuance, or conversely separation, is consonant with the best interests of the service and the member. When, in the opinion of a member's commanding officer, the member has become unable to perform his or her duties in the limited assignment, the member shall be referred to a MTF for observation, treatment, and appropriate disposition. Unless the disqualifying condition has progressed to a point at which the member is no longer able to perform duty with limitations, the member shall complete the PLD period.

8012 EXPIRATION OF PERMANENT LIMITED DUTY STATUS

- R) All members continued in PLD status for a period in excess of 6 months shall be currently examined and again referred to the DES for reevaluation near the completion of the PLD period or at such time as the PLD is otherwise terminated.